1737

SUPREME COURT OF THE UNITED STATES.

No. 213.

THE UNITED STATES, APP'TS,

vs.

JUAN MORENO.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

"Santa Rosa."

INDEX.

	Original.	Print.
Proceedings of board of commissioners	1	1
Petition	5	2
Deposition of J. R. Carrillo	7	2
" S. V. Prudhomme	8	3
Espediente	9	4
Map	11	4
"	12	4
Translation	19	7
"H. H. No. 1"	25	9
Translation	27	10
Opinion	29	11
Decree	32	13
Certificate	35	14
Appeal	37	14
Summons	41	16
Answer	43	17
Motion to substitute parties	47	18
Affidavit of A. Machado	48	18
Deed	49	19
Motion for new trial	53	20
Motion for continuance	57	22
Deposition of J. Foster	60	23
" A. Pico	66	25
Decree	70	27
Appeal	72	28
Clerk's certificate	73	28

1 *Transcript of the proceedings in case number* 486.

JUAN MORENO, claimant,
vs.
THE UNITED STATES, defendant. } For the place named "Santa Rosa."

2

3 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered that on this thirteenth day of Nov., anno Domini one thousand eight hundred and fifty-two, before the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Juan Moreno, for the place named "Santa Rosa," was presented, and ordered to be filed and docketed with No. 486, and is as follows, to wit:

(*Vide* page 3 of this transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

LOS ANGELES, *November* 15, 1852.

In case No. 486, Juan Moreno, for the place named "Santa Rosa," the deposition of José Ramon Carrillo, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, was filed.

(*Vide* page 5 of this transcript.)

In the same case, the deposition of L. V. Prudhomme, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, with document marked H. H. No. 1, and a translation thereof, marked ———, annexed thereto, was filed.

(*Vide* page 6 of this transcript.)

4 SAN FRANCISCO, *March* 21, 1854.

Case No. 486 was submitted on briefs, and taken under advisement by the board.

SAN FRANCISCO, *April 4th*, 1854.

In the same case, Commissioner Alpheus Felch delivered the opinion of the board confirming the claim.

(*Vide* page 27 of this transcript.)

SAN FRANCISCO, *Aug't 15th*, 1854.

In the same case, on motion of the United States law agent, the following order was made, to wit:

(*Vide* page 31 of this transcript.)

5 *Petition.*

TO THE HONORABLE THE UNITED STATES COMMISSIONERS FOR ASCERTAINING AND SETTLING PRIVATE LAND CLAIMS IN CALIFORNIA:

Your petitioner, Juan Moreno, resident of the county of Los Angeles and State of California, respectfully represents that he claims to be owner in fee-simple of the lands called "Santa Rosa," situate in the county of San Diego; that they were granted to him by Pio Pico, while governor of California, and vested with ample powers in the premises, by deed of grant in fee, dated the 30th of January, A. D. 1846.

That your petitioner has ever since occupied the same, as well as before said grant, and has fullfilled all its conditions.

That the boundaries of the lands called Santa Rosa are well known, were well understood, and defined by a map which accompanied the prayer for said grant to said governor; and are bounded by the lands of Temecula, of the Laguna, and of Santa Margarita, neighboring ranchos, and contain three leagues of grazing land, more or less. There is no interfering claim. The lands have not been surveyed by the United States surveyor general for California.

Your petitioner relies upon the following documentary evidence filed herewith to support his claim:

1st. Copy of the original grant, marked "A," accompanied by a true translation, marked "B."

He will rely upon such other documentary evidence and
6 parol testimony as may be necessary.

2d. Among which is a map, marked "C," filed herewith.

And he prays that your superior legal knowledge and sense of justice may confirm his claim.

And, as in duty bound, &c.

Nov. 13th, 1852.

SCOTT & GRANGER,
Atty's for Petitioner.

Filed in office Nov. 13th, 1852.

GEO. FISHER.

7 *Deposition of José Ramon Carrillo.*

LOS ANGELES, *Nov. 15th*, 1852.

On this day, before Com'r Hiland Hall, came José Ramon Carrillo, a witness in behalf of the claimant, Juan Moreno, petitioner, No. 486, and was duly sworn, his evidence being interpreted by the secretary.

The U. S. associate law agent was present.

In answer to questions by counsel for the claimant the witness testified as follows:

My name is José Ramon Carrillo; my age is thirty years, and I reside in Los Angeles county; I know the rancho Santa Rosa, and

have known it for about six years; it is about eighteen leagues from this place in a southern direction, on the road to Sonora, and it is near and adjoining to Temecula. Since I knew it has been occupied by Juan Moreno. He had a house there in which he lived when I first knew it, and had corrales and upwards of a hundred head of cattle and some horses. He had a small piece of ground sown with grain and some with vegitables; it was long before the battle of San Pascual that Moreno first occupied the land, and was five months before that battle that I first knew that place.

his
JOSÉ RAMON × CARRILLO.
mark.

Sworn and subscribed before me.

HILAND HALL, *Com'r.*

Filed in office Nov. 15th, 1852.

GEO. FISHER, *Sec.*

8 *Deposition of Leon V. Prudhomme.*

LOS ANGELES, *Nov. 15th*, 1852.

On this day, before Com'r Hiland Hall, came Leon V. Prudhomme, a witness in behalf of the claimant, Juan Moreno, petition No. 486, and was duly sworn, his evidence being given in Spanish and interpreted by the secretary.

The U. S. associate law agent was present.

In answer to questions by counsel for the claimant the witness testified as follows:

My name is Leon Victor Prudhomme; my age is thirty years, and I reside in Los Angeles; a paper is shown me purporting to be a grant to Juan Moreno, dated 30th of July, 1846; I am acquainted with the signature of Pio Pico and José Ma. Covarrubius, and I believe their signatures on said paper to be genuine; it is hereto annexed, and marked H. H. No. 1. I know the rancho Santa Rosa; I have known it from the spring of the year 1845; Juan Moreno was occupying it at that time; he had a cabin there and some cattle; I have always understood that he has continued to occupy the place to the present time, though I have not been there since 1845.

L. V. PRUDHOMME.

Sworn and subscribed before me.

HILAND HALL, *Com'r.*

Filed in office Nov. 15th, 1852.

GEO. FISHER, *Sec'y.*

9 *Espediente.*

1845.—Espediente promovido por Juan Moreno en solicitud del terreno nombrado Santa Rosa, de 99.

10 Exmo. Sor. Gobernador: Juan Moreno, California por nacimiento y vecino de esta ante V. E. como mas haya lugar en derecho comparesco y digo. que teniendo algunos bienes de compo con que formar una finca rustica y careciendo de un lugar proporcionado donde colocarlos denuncia en debida forma un sitio de ganado mayor que se halla entre Temecula y la laguna llamada Santa Rosa del cual previas las averiguaciones de estilo niego se me estienda el titulo respectivo en razon de estar absolutamente baldio y sin aprovechamiento alguno.

Angeles, *Abril* 8, de 1845. Pase á informe del administrador de la mision de S. Luis Rey. PICO.

Por tanto A. V. E. suplico haga como pido en lo que recibire gracia dispensando el papel comun pr. falta de sello respectivo.

C. de los Angeles, Abril 5th de 1845.

JUAN MORENO.

[11 and 12 follows.]

Angeles, *Abril 25th de* 1845.

El parage nombrado Santa Rosa que se pretende en la presente solicitud se haya enteramente valdio à causa de no tener la mision que administre como cabrirlo. Pues no a parece en el mas de
13 algun numero, corto de reses alsadas, y aunque el ciud'o Julian Mauriquez ha metido à dicho parage algunos bienes semovientes el que informa ignora con que permiso; es cuanto esta administracion puede informar sobre el particular en complimiente del antecedente superior derecho.

JOSÉ JOAQ'N ORTEGA.

Angeles, *Abril* 28 *de* 1845.

Vuelva al interesado pa. qe. agregue à este espediente el deseño del terreno que pretende y en seguida venga de nuevo à esta gobierno pa. q'e le libre el titulo de propiedad, pudiendo ocupar provisionalmente el terreno la virtud de este decreto y micatras se le espida el mencionado titulo.

PICO.

(Here follows two sketches, or rough maps, respectively marked original, pages 11 and 12).

Ang's, *En'o* 30 *de* 1846. Ocurre la parte que representa a la secretaria del despacho de gob'o para que en vista de este decreto estienda y titulo
14 quedando el interesado con la obligacion de reformar diseño. PICO.

Exmo. Sor.: Juan Moreno vecino de esta capital ante V. E. con el mas debido respeto comparesco y digo, que con arreglo al decreto que V. E. tubo à bien dar en el mes de Abril del año de mil ochocientos cuarenta y cinco, el que presente el deseño del terreno que ocupa provisionalm'te nombrado Sta. Rosa, le acom-

1763

En la misma fecha se estendio el titulo.
COVARRUBIAS, *S'rio.*

pano con la mayor sumision el escreto de mi pedido y el deseño para que V. E. tenga la bondad de que se me estienda el titulo de propiedad, terreno que colinda con Temecula. La Laguna, y Sta. Margarita, no designo leguas por no equivocarme, pero si pido que el terreno que no tenga deseño, lo denúncio en toda forma para que quede à benificio de mi individuo y familia, pues mis bienes cubriran el campo, amas de que mi hermano Marcos me ha dicho le deje rennir sus cortes bienes con los mios.

Por tanto y por todo lo espuesto.

A. V. E. suplico convenga à mi solicitud pues siendo asi recibire gracia Juro no ser de malicia y lo necesario &ra dignandose admitir esta en papel comun por falta de sellado.

Angeles, En'o 30 de 1846.

No se firmar.

Pio Pico, vocal decano de la asamblea, ayuntamental y gobernador provisional de las Californias:

Por cuanto el ciudadano Juan Moreno ha pretendido para su benificio personal y el de su familia el terreno conocido con el nombre de Sta. Rosa, practicadas previamente las averiguaciones concernientes, usando de las facultades que me son conferidas à nombre de la nacion Mejicana he venido por decreto de este dia en concederle el espresado terreno, declarandole la propiedad de el por las presentes letras, de conformidad con la ley de 18 de Agosto de 1824, y reglamento de 21 de Noviembre de 1828, à reserva de la aprobacion de la ex'ma asamblea departamental y bajo las condiciones siguientes.

1a. Podra cercarlo sin perjudicar las travesias caminos y servidumbres, lo desfrutara libre y esclusivamente, destinandolo al uso y cultivo que mas le acomodo, pera lo tendra, ocupado con bienes semovientes, y casa habitada para impedir el denuncio.

2a. Solicitara del juez respectivo le de la posesion juridica la virtud de este despacho, por el cual se demarcaran los linderos con las mojoneras necessarias.

3a. El terreno de que se hace donacion es el mismo que demustra el deseño que obra en el espediente y colinda con tierras, de semucala, de la laguna y de Sta. Marguerita. El juez que la posesione lo hara medir conforme à ordenanza y dara aviso à este gobierno del numero de sitios de ganado mayor que contenga.

En consecuencia mando que teniendose el presente titulo por firme y valedero se tome razon de el en el libro à que corresponde y se entregue al interesado para su resguardo y demas fines.

Dado en la ciudad de los Angeles, en este papel comun por falta del sellado à treinta de Enero de mil ochocientos cuarenta y seis.

ANGELES, *Mayo* 8 *de* 1840.

Dada cuenta en sesion de hoy con este espediente à la E. A. D. se mando pasar à la comision de terrenos baldios.

PIO PICO, *Presid't.*
AGUSTIN OLVERA, *Srio.*

E. S.—La comision de terrenos valdios à examinado con detencion el presente esped'te promovido fr. el ciud'o Juan Moreno del parage S'ta Rosa q. le fue concedido fr. el superior gob'o dep't conforme à las leyes de la materia, en este concepto pone à la deliberacion de V. E. la proposicion siguiente.

Se a preneba la concesion hecha al ciud'o Juan Moreno del parage conocido S'ta Rosa jurisdiccion de S. Diego la estencion del q. demuestrae el diseño segun titulo librado con f'ha. 30 de Enero del presente año, y conforme à la ley de 18 de Agosto de 1824, y al
17 art'o 5o. del reglamento de 21 de Abril de 1828. Sala de com's en la ciudad de los Ang'o, Mayo 28, 1846.

S. ARGUELLO.

ANGELES *Junio* 3 *de* 1846.

En session de este dia aprobo la ex'ma asamblea departamental la proposicion del dictamen anterior.

OFFICE OF SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, John C. Hayes, surveyor general of the United States for the State of California, and as such having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican Territory or department of Upper California, by virtue of the power vested in me by law, do hereby certify that the (11) eleven preceeding and hereunto annexed pages of tracing paper, numbered from one to eleven, inclusive, exhibit a true and accurate copy of a certain document now on file and forming a part of the said archives in this office.

In testimony whereof, I have hereunto signed my name officially and caused my seal of office to be affixed, at the city of San [SEAL.] Francisco, this twelfth day of November, 1853.

(Signed) JOHN C. HAYES,
U. S. Surveyor General for California.

18 *Extract from the 2nd section of the act of Congress "providing for the survey of public lands in California, and for other purposes," approved March 3rd,* 1853.

"The Secretary of the Interior is hereby authorized to cause an official seal to be prepared for the office of the said surveyor general, (California,) and any copy or extract from the plats, field-notes, and other records and documents on file in his office, when attested as such by the said seal and the signature of the surveyor general, shall in all judicial matters have the same force and effect as the original."

Filed in office November 28th, 1853.

(Signed) GEO. FISHER, *Sec'y.*

19 *Translation of espediente.*

1845.—Record of proceedings at the instance of Juan Moreno, soliciting the land called "Santa Rosa."—(499.)

EXCELLENT SOR. GOVERNOR: I, Juan Moreno, a Californian by birth, and resident of this district, as best may be consistent with law, appear before you and say:

That, possessing some country stock wherewith to establish a ranch, and being in need of an appropriate place where to locate my stock, I denounced in due form one square league of land, (sitio de ganado mayor,) situate between Temecula and the Lagoon, called Santa Rosa, to which, after previous judicial investigation, I pray to be awarded the respective title, on the ground that it is absolutely vacant and without any availableness.

Therefore, I pray your excellency to do as I asked for, whereby I shall receive a favor, in dispensing (the use of) common paper for want of stamped paper.

City of Los Angeles, April 5th, 1845.

JUAN MORENO.

(In the margin.)

ANGELES, *April 8th*, 1845.

Be it sent for the report of the administrator of the mission of San Luis Rey.

PICO.

20 ANGELES, *April 25th*, 1845.

The location called Santa Rosa, claimed in the present instance, is in an entire vacant state. On account of that, the mission of administrate has not the wherewithal to cover it, since it does not appear to amount to more than a small number of old horses; and, although the citizen Julian Mauriques has located some cattle on said location, the reporter is ignorant of with what permission.

This is all that this administrator can report on the subject in compliance with the foregoing superior decree.

JOSÉ JOAQUIN ORTEGA.

ANGELES, *April 28th*, 1845.

Be it returned to the interested party, that to this espediente may be attached the plat of the land he claims, and thereafter to come anew to this government, that the title deed of ownership may be issued, while he can occupy provisionally the land in virtue of this decree, and meanwhile the mentioned title deed is being made out.

PICO.

21 *Plat.*

EXCELLENT SIR: I, Juan Moreno, resident of this capital, with the interest represent, appear before your excellency and say: That in accordance with the decree your excellency thought fit to give in the

month of April, in the year 1845, requiring me to present the plat of the land I occupy provisionally, called Santa Rosa, I hereby, with the deepest submission, accompany my petition and the plat, that your excellency may have the goodness to make out the title deed of ownership to me of the land bordering on Temecula, the Lagoon, and Santa Margarita, not naming the number of leagues, as I might be mistaken; but I ask that the land which have no owner, and which I demand in due form, be set apart for my individual benefit and that of my family, since my stock will cover the land, besides that my brother Marcos has told me to let him join his small stock to mine.

Therefore, and in view of what I have represented, I pray you to accede to my solicitation, for thus I shall receive a favor, swearing that there is no malice herein, and to what else necessary; while you will be pleased to admit this on common paper, for want of stamped paper.

Angeles, January 31st, 1846.

[I don't know how to sign.]

22 (In the margin.)

ANGELES, *January* 30th, 1846.

The party representing will apply to the secretary of state of the government, that in virtue of this decree the title deed be issued and given to the interested party, with the obligation to amend the plat.

PICO.

(Also in the margin.)

On the same day the title deed was issued.

COVARRUBIAS, *Secretary.*

Pio Pico, senior member of the departmental assembly and provisional governor of both Californias:

Whereas the citizen Juan Moreno has claimed, for his personal benefit and that of his family, the land known by the name of Santa Rosa, after having previously made the necessary investigation in exercise of the powers vested in me, in the name of the Mexican nation I have concluded, by a decree of this day's date, to grant him the said land, declaring it his property by the present letters patent, in conformity with the law of the 18th August, 1824, and regulation of 21st of November, 1828, under reservation of the approval of the most excellent departmental assembly, and under the following
23 conditions:

1st. He may fence it with prejudice to the crossings, roads, and servitudes; he will enjoy it freely and exclusively, appropriating it to the use or culture that best may suit him; but he will have it occupied with live stock, and an inhabited house to hinder a denunciation.

2nd. He will solicit of the respective judge to give him judicial possession in virtue of this document, by whom the boundaries are to be measured with necessary landmarks.

3rd. The land donated to him is the same as exhibited in the plat attached to this espediente, and borders on land of Temecula, on the Lagoon, and on Santa Margarita.

The judge who shall possess him of it will cause it to be measured conformable to ordinance, and give notice to the government of the number of leagues (sitios de ganado mayor) it may contain.

Consequently, I order that this title deed being held firm and valid, it be entered in the respective book and delivered to the interested party for his security and other purposes.

Given in the city of Los Angeles, on this common paper, on the thirtieth day of January, one thousand eight hundred forty-six.

ANGELES, *May 8th*, 1846.

24 Having notified the departmental assembly in to-day's session of this espediente, it was ordered sent to the committee on vacant lands.

PIO PICO, *President.*
AUGUSTIN OLIVERA,
Secretary.

EXCELLENT SIR: The committee on vacant lands has examined with circumspection the present espediente, at the instance of the citizen Juan Moreno, about the location Santa Rosa, which was granted him by the superior departmental government, conformable to the laws on the subject.

In this understanding it submits to your excellency's deliberation the following proposition:

It approves of the grant made to the citizen Juan Moreno of the location known as Santa Rosa, jurisdiction of San Diego, in extent as exhibited in the plat according to title deed issued under date 30th of January this year, and conformable to law of 18th of August, 1828, and article 5th in the regulation of 21st October, 1828.

Hall of committee, in the city of Los Angeles, May 28th, 1846.

S. ARGUELLO.

ANGELES, *June 3d*, 1846.

In session of this day the excellent departmental assembly approved of the foregoing proposition.

Filed in office Nov. 28th, 1853.

GEO. FISHER, *Sec.*

25 *Document H.H. No. 1, ann'd to the deposition of Leon V. Prudhomme, signed H.H. No. 1.*

Pio Pico, vocal decano de la asamblea departamental y gobernador provisional de las Californias.

{Gobierno del Dep / Place of eagle / de Californias.} Por cuanto el ciudadano Juan Moreno ha pretendido para su benificio personal y el de su familia el terreno conocido con el nombre de Santa Rosa; practicadas previamente las averiguaciones concernientes, usando de

las facultades que me son conferidas á nombre de la nacion Mejicana, he venido por decreto de este dia en concederle el espresado terreno, declarandole la propiedad de el por las presentes letras, de conformidad con la ley de 18 de Agosto de 1824, y reglamento de 21 de Noviembre de 1828, á reserva de la aprobacion de la ex'ma asemblea departamental, y bajo las condiciones siguientes:

1o. Podra cercalo sin perjudicar las travesias caminos, y servidumbres; lo disfrutará libre y esclusivamente destinandole al uso y cultivo que mas le acomode; pero lo tendrá ocupado con bienes semovientes y casa habitado para impedir el denuncio.

2o. Solicitara del juez respectivo le dé la posesion juridica en virtud de este despacho, por el cual se demarcaran los linderos con las majoneras necesarias.

3o. El terreno de que se le hace donacion es el mismo que demuestra el diseño que obra en el espediente y colinda con tierras
26 de Temecula de la Laguna, y de Santa Margarita; el juez que le posesione lo hara medir conforme á ordenanza, y dara aviso á este gobierno del numero de sitios de ganado mayor que contenga.

En consecuencia mando que teniendose el presente titulo por firme y valadero, se tome razon de el en el libro á que corresponde, y se entregue al interesado para su resguardo—y demas fines. Dado en la ciudad de Los Angeles, en este papel comun por falta del sellado á treinta de Enero de mil ochocientos cuarenta y seis.

(Signed) PIO PICO.
(Signed) JOSE MA. COVARRUBIAS, *S'rio.*

Queda tomada razon de este titulo en el libro respectivo. Angeles, fecha ut supra.

(Signed) COVARRUBIAS.

El Exmo. Sor. Gobernador dispone se tome razon de este despacho en la sub-prefectura del partido de Sn. Diego.

(Signed) COVARRUBIAS.

San Diego, *Febrero* 14 *de* 1846.

Queda tomaba razon de este dispacho á f. 2 & 3 vuelta del libro, respectivo.

(Signed) ARGUELLO.

Filed in office November 15th, 1852.

(Signed) GEO. FISHER, *Sec'y.*

27 *B.—Translation of grant.*

Pio Pico, señor member of the departmental assembly, and provisional governor of the Californias:

Whereas the citizen Juan Moreno has petitioned, for his personal benefit and that of his family, for the land known by the name of Santa Rosa, having previously practiced the relative investigations, exercising the powers vested in me, in the name of the Mexican nation I have concluded, by decree of this date, to grant him the afore-

said land, declaring it to be his property by the present letters, in conformity with the law of the 18th of August of 1834, and regulations of 21st November of 1828, reserved for the approbation of the M. E. departmental assembly, and under the following conditions:

1st. He may enclose it without prejudice to the crossings, roads, and servitudes; he may farm it, freely and exclusively devoting it to the use and culture which may best suit him; but he shall occupy it with paternal property and a house inhabited, so as to prevent renunciation.

2d. He shall solicit of the proper judge to give him the judicial possession by virtue of this dispatch, whereby the boundaries shall be designated, with the respective landmarks.

3d. The land of which grant is made is the same which the diagram which works in the espediente "designates and joins the land of Temecula, of the Laguna, and of Santa Margarita. The judge who shall give possession shall have it measured, agreeably to
28 ordinance, and shall give notice to this government of the numbers of leagues (sitios) of grazing land it contains.

Wherefore I order that the present title being held firm and valid, account thereof be taken in the corresponding book, and be delivered to the party interested, for his protection and further ends.

Given in the city of Los Angeles, on this common paper, for want of the sealed, the 30th of January, 1846.

(Signed) PIO PICO.
(Signed) JOSÉ MA. COVARRUBIAS, *Sect'y.*

Account of this title remains taken in the respective book.
COVARRUBIAS.

The M. E. Mr. Governor has disposed that account of this dispatch be taken in the sub-prefectura of the district of San Diego.
COVARRUBIAS.

SAN DIEGO, *February* 14, 1846.

Account of this dispatch remains taken at leafs 2 & 3, the other side, in the respective book.
(Signed) ARGUELLO.

Filed in office Nov. 13th, 1853.
GEO. FISHER, *Sec'y.*

29 *Opinion of Commissioner Alpheus Felch.*

JUAN MORENO *vs.* THE UNITED STATES. } For the place called Santa Rosa, in San Diego county, containing by estimation three square leagues of land.

This claim is based on a grant made to the present claimant by Governor Pio Pico, which is given in evidence, and bears date January 30th, 1846.

The deposition of L. V. Prudhomme shews that the claimant occu-

pied the place in the spring of 1845, and had a cabin on it and some cattle, and continued to occupy it, as he understood, to the time of giving the deposition in 1853; and the witness Carrillo swears that the claimant had lived on the premises ever since he first knew the place; that he had corrals, cattle, and horses on it, and a portion of the ground under cultivation.

He says he knew the place five months before the battle of San Pasqual, and that it had been occupied long prior to that time by the claimant.

The battle referred to took place on the 6th of December, 1846, and the period of five months anterior to that event would fix the date of the witness' knowledge on the 6th day of July, 1846, the day before the American flag was first hoisted at Monterey.

It is also a period within one year of the date of the grant, and the fact that the residence and improvements existed within that time is established by the proof.

On the whole testimony it is evident that the claimant
30 resided upon and cultivated the land from the time of his grant until the conquest of the country, and its subsequent session.

The land granted is described by reference to a map attached to the espediente, and is further alleged to be the same which joins the land of the rancho called Temecula, Laguna, and Santa Margarita.

The number of leagues contained in the premises is not stated, but there were to be ascertained and reported when the judicial possession should be given.

In the proceedings to obtain the grant the applicant expressly stated that he solicited the entire piece of vacant land lying in the position bounded by the places above named, the quantity of land not being stated, lest he might be mistaken.

He was required to furnish a map of the property solicited, which he did, and therefore the grant was made by express reference to it for a description of the premises granted.

This map became, therefore, a part of the title papers, and must be so regarded.

It is imperfect in its details, and much less satisfactory as evidence than could be desired; and if it stood alone, unaided by the mention of the surrounding lands, I doubt much whether it could be regarded as sufficient to identify and segregate the premises.

The explanation contained in the espediente, by showing
31 that the land solicited was located in the midst of land already granted, and the declaration that the petitioner asked for all that remained vacant at that place, and the boundaries given in the grant, by naming the three ranchos by which it was bordered, aid materially in understanding the grant, and in defining the limits of the land granted.

These, in connection with the map, a copy of which will be made

a part of the decree in the case, will, I think, afford the means for making the survey of the premises.

The claim will be confirmed accordingly.

Confirmed.

Filed in office April 4th, 1854.

GEO. FISHER, *Sec'y.*

32 *Decree.*

JUAN MORENO }
vs.
THE UNITED STATES. }

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the petitioner is valid, and the same is therefore hereby confirmed.

The land of which confirmation is hereby made is situated in San Diego county, and is that known by the name of Santa Rosa, and is now in the occupancy of said petitioner, and is that which is designated on the map which is a part of the espediente, a traced copy of which, from the archives in the office of the United States surveyor general, is on file in this case, to which map reference is to be made for a description of the land hereby confirmed, and the same is to be taken as a part of this decree. The said land hereby confirmed being that which adjoins the lands of Temecula, of the Laguna, and of Santa Margarita, and subject to be the boundaries of the places so called, as settled by actual survey, or by establishing of their several lines, or by the same, where no such demarcation of their boundaries is had, as understood in fact and regarded to be at the time of the concession of said place, called Santa Rosa, to said Juan Moreno, in January, 1846, said premises containing three square leagues, more or less, of land.

33 ALPHEUS FELCH,
THOMPSON CAMPBELL,
R. AUG. THOMPSON,
Commissioners.

Filed in office April 4th, 1854.

GEO. FISHER, *Sec'y.*

Certificate.

And it appearing to the satisfaction of this board that the land hereby adjudicated is situated in the southern district of California, it is hereby ordered: That two transcripts of the proceedings and of the decision in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary, one of which transcripts shall be filed with the clerk of the United States district court of the southern district of California, and the other be transmitted to the Attorney General of the United States.

34

35 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing thirty-two pages, numbered from 1 to 32, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings, and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses upon which the same is founded on file in this office, in case No. 486 on the docket of the said board, wherein Juan Moreno is the claimant, against the United States, for the place known by the name of Santa Rosa.

In testimony whereof, I hereunto set my hand and affix my private [SEAL.] seal, (not having a seal of office,) at San Francisco, California, this thirtieth day of October, A. D. 1854, and of the independence of the United States of America the seventy-ninth.

GEO. FISHER, *Sec'y.*

Filed November 8th, 1854.

36 C. E. CARR, *Cl'k.*

37 *Notice of appeal.*

OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,
Washington, 3d February, 1855.

JUAN MORENO
vs. } 486.
THE UNITED STATES.

You will take notice that in the above case, decided by the commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in the office on the 30th day of October, 1854, the appeal in the district court of the United States for the southern district of California will be prosecuted by the United States.

L. CUSHING,
Attorney General.

Filed April 2d, 1855.

38 C. E. CARR, *Cl'k.*

39 In the district court of the United States for the southern district of California.

CITY AND COUNTY OF LOS ANGELES,
State of California:

JUAN MORENO, app'ee,
ads. } Docket No. 148. Transcript No. 486.
THE UNITED STATES, app'l't.

To the Hon. Isaac S. K. Ogier, judge:

The petition of Pacificus Ord, a resident of said city, county, and State, attorney of the United States for the southern district of Cali-

fornia, who petitions in this behalf for the United States, and being present here in court, in the name and behalf of the United States, represents as follows: That heretofore, to wit. on or about the 13th day of November, A. D. 1852, Juan Moreno presented a petition to the commissioners to ascertain and settle the private land claims in the State of California, when sitting as a board. claiming a tract of land called Santa Rosa, situate in the county of San Diego, State of California, which said petition is referred to for a description of the land claimed, a copy of which appears in the transcript hereafter referred to. That thereafter, to wit, on or about the 4th day of April, A. D. 1854, the said commissioners confirmed, by final decision, the said claim of said petitioner. That thereafter, to wit. on or about the 8th day of November, A. D. 1854, a duly certified transcript of the proceedings and decision of the said commissioners in said cause, and the papers and evidence on which the said decision was founded, was filed in the office of the clerk of the district court of the United States for the southern district of California, and marked No. 486, reference to which it is prayed may be had and made part of this petition. That on or about the 30th day of October, A. D. 1854, the honorable Caleb Cushing, Attorney General of the United States, received a duly certified duplicate of said transcript of the proceedings and decision of said commissioners in said cause, and the papers and evidence on which said decision was founded. That thereafter, to wit, on the 2d day of April, A. D. 1855, the said Attorney General of the United States filed, or caused to be filed, in behalf of the United States, a notice with the clerk of said district court of the United States, that the appeal in said cause from the said decision of the said commissioners, in the district court of the United States for the southern district of California, would be prosecuted by the United States. Your petitioner further represents that the land claimed, as aforesaid, is situate in the southern district of California, and within the jurisdiction of this honorable court. Your petitioner further represents and insists that the said claim is invalid; and the said decision of said commissioners is erroneous, and ought to be reversed, revised, and set aside for many errors and imperfections of law and evidence apparent in said certified transcript of the proceedings and decisions of said commissioners in said
40 cause, filed and appealed from as aforesaid. And your petitioner denies all and singular, each and every allegation in the said petition of said claimant, presented as aforesaid to said commissioners. And your petitioner further denies that the said claimant has any valid right or title to said land claimed as aforesaid, or any part thereof.

And no sufficient proof having been made of the allegations in said petition to said commissioners, or in support of the said claim, no decision confirming the same should have been made by said commissioners; but the said claim should have been rejected by them. And the said claimant having no valid right or title derived from the Spanish or Mexican governments to the land claimed as aforesaid, the lawful right and title in and to the said land was acquired by and it

now belongs to the United States, by virtue of conquest and the treaty of peace, friendship, limits, and settlement between the United States and the republic of Mexico, made at the city of Guadalupe Hidalgo, February 2d, A. D. 1848.

Wherefore the said Pacificus Ord, attorney of the United States for the southern district of California, for and in behalf of the United States, by reason of the premises, and in pursuance of the act of Congress entitled "An act to ascertain and settle the private land claims in the State of California," approved March 3d, A. D. 1851, and the laws and statutes in such case made and provided, prays that the said claimant, or his attorney, may be served with a copy of this petition; and that this honorable court will review the said decision of said commissioners, and reverse the same; and decide on the validity of the same, and decree the alleged title to be invalid, with costs and general relief.

P. ORD, *Attorney of the United States*
for the Southern District of California.

Filed Nov. 8th, 1855.

C. E. CARR, *Clk.*

41 *Summons.*

UNITED STATES OF AMERICA.
South'n District of California, ss:

The President of the United States to Juan Moreno, greeting:

Take notice that a petition, a copy of which is herewith served upon you, has been filed against you in the district court of the United States in and for the southern district of California, on the 8th day of November, in the year of our Lord one thousand eight hundred and fifty-five, at the city and county of Los Angeles, in said district, by P. Ord, U. S. attorney for the southern district of California, in behalf of the United States, praying said court to reverse the decision of the U. S. land commissioners of the 4th day of April, A. D. 1854, confirming your claim to the land called Santa Rosa, in the county of San Diego, and appealed by the Attorney General of the United States; and that you are required to appear at said court, in said city, within ten days after the service hereof, if served on you within the county of Los Angeles, and within twenty days if served on you in the county of San Diego or San Bernardino, and within forty days if served on you in any other county of said State, exclusive of the day of service, and answer said petition, or the plaintiff will apply to the court for the relief demanded therein.

In witness whereof, I have hereunto set my hand and affixed the seal of the said court this tenth day of November, in the year of our Lord one thousand eight hundred and fifty-five, at Los Angeles aforesaid.

[SEAL.]

C. E. CARR, *Clk.*

42 Received Nov. 13th, 1854.

EDWARD HUNTER,
U. S. Marshal.

I served this summons, along with the proper copy of the petition, upon Juan Moreno, by delivering to him personally a true copy of the same, at Los Angeles, in the southern district of California, on the 27th day of No'ber, A. D. 1855.

EDWARD HUNTER,
U. S. Marshal,
By M. L. GOODMAN, *Dep'ty.*

Sworn to and subscribed before me Nov. 28, 1855.
C. E. CARR, *Cl'k.*

Answer.

43 In the United States district court for the southern district of California.

JUAN MORENO, app'ee, *ads.* THE UNITED STATES, app'l't. } Case No. 148. Transcript No. 486. Lands called "Santa Rosa," San Diego county.

And now comes the above-named appellee, by William G. Dryden, his attorney, and for answer to the petition of review filed herein by the appellants, avers that his title to the land claimed by him in this case, and described in the said petition of review, and in the transcript of the proceedings of the United States land commissioners therein referred to, is good and valid.

Therefore this appellee prays the judgment of this honorable court that the decision of the board of United States land commissioners may be confirmed, and that the title of the appellee to the said lands may be decreed to be valid, and that he may be hence dismissed with his costs herein expended, and such further or general relief as to equity and conscience belong and his case may require.

W. G. DRYDEN,
Attorney for Appellee.

Filed Nov. 30th, 1855.

C. E. CARR, *Cl'k.*

44

45 *Answer.*

In the United States district court for the southern district of California, Los Angeles county.

AGUSTIN MACHADO, appellee, *ads.* THE UNITED STATES, appellant. } Case No. 148. Transcript No. 486. Lands called "Santa Rosa," San Diego county.

And now comes the above-named appellee, by William G. Dryden, his attorney, and for answer to the petition of review filed herein by the appellants, avers that his title to the lands claimed by him in this case, and described in the said petition for review, and in the transcript of the proceedings of the United States land commissioners therein referred to, is good and valid.

Therefore the appellee prays the judgment of this honorable court that the decision of the board of United States land commissioners may be confirmed, and that the title of the appellee to the said lands may be decreed to be valid, and that he may be hence dismissed with his costs herein expended, and such further or general relief as to equity and conscience belong and his case may require.

W. G. DRYDEN,
Attorney for Appellee.

Filed Dec. 18th, 1855.

C. E. CARR, *Cl'k.*

46

Motion for substitution of parties.

47 In the U. S. district court for the southern district of California, Los Angeles county.

JUAN MORENO, appellee, *ads.* THE UNITED STATES, appellant. } Case No. 148. Lands called Santa Rosa, San Diego county.

And now comes Agustin Machado, by his attorney, William G. Dryden, and prays this honorable court, by its order entered upon the minutes, to make him, the said Agustin Machado, the appellee in the above-entitled cause, for the reason that, since the confirmation of this claim by the board of United States land commissioners to the original claimant, Juan Moreno, the said Moreno, by deed of conveyance, has sold all his right, title, and interest in the said lands to this petitioner, who is now the real party in interest in this cause; and further, to be allowed to annex to the transcript and papers in said cause the deed of conveyance aforesaid; and would ever pray, as in duty bound.

W. G. DRYDEN,
Attorney for the vendee of Juan Moreno, appellee.

Filed Dec. 3, 1855.

C. E. CARR, *Cl'k.*

Affidavit of A. Machado.

48 In the United States district court for the southern district of California, Los Angeles county.

JUAN MORENO, appellee, *ads.* THE UNITED STATES, appellant. } Case No. 148. Lands called Santa Rosa, San Diego county.

Agustin Machado, a resident of the city and county of Los Angeles, State of California, who, after being duly sworn, deposes and says that, on seventeenth day of August, the appellee in the above-entitled cause made and executed to this affiant a legal deed of conveyance, for a valuable consideration, of all his right, title, and interest, in and to the lands called "Santa Rosa," situate in the county of

San Diego, State aforesaid, and described in the petition and transcript of this cause, and that this affiant is now the owner in "fee simple" absolute of said described lands, as aforesaid.

his
AGUSTIN + MACHADO.
mark.

Subscribed and sworn to before me this 4 day of December, A. D. 1855.

ALEX. GIBSON,
Justice of the Peace.

Filed Dec. 6th, 1855.

C. E. CARR, *Clk.*

Deed.—J. Moreno to A. Machado.

49 This indenture, made the seventeenth day of August, in the year one thousand eight hundred and fifty-five, between Juan Moreno and Maria Antonio Cañedo, his wife, residents of the county of Los Angeles, State of California, parties of the first part, and Agustin Machado, also resident of the said county, of the second part, witnesseth: That the said parties of the first part, in consideration of the sum of fifteen hundred dollars, to wit, one thousand dollars in money and five hundred dollars in stock, to them duly paid before the delivery hereof, have bargained and sold, and by these presents do grant and convey, to the said party of the second part, his heirs and assigns forever, all that certain tract or parcel of land lying and being in the county of San Diego, State of California, known by the name of the Rancho of "Santa Rosa," adjoining the lands of "Temecula," of "Santa Margarita," and of the "Laguna" reference for further description thereof being had to the grant of said tract to the said Juan Moreno, in January, A. D. 1846, and also to the confirmation of the same by the board of U. States land commissioners on the fourth day of April, A. D. 1854, as the same appears of file, the said lands or Rancho of "Santa Rosa" hereby conveyed, containing three square leagues of land, more or less, with the appurtenances, and all the estate, title, and interest of the said parties of the first part therein. And the said parties of the first part do hereby covenant and agree with the said party of the second part that at the time of the delivery hereof, the said parties of the first part, the lawful owners of the premises above granted, and seized thereof in fee simple, absolute; and that they will warrant and defend the above-granted premises in the quiet and peaceable
50 possession of the said parties of the second part, his heirs and assigns forever.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

his
JUAN + MORENO. [SEAL.]
mark.

her
MARIA ANTONIA + CAÑEDA. [SEAL.]
mark.

Sealed and delivered in presence of witness—
W. G. DRYDEN.

STATE OF CALIFORNIA, *County of Los Angeles, ss:*

On this seventeenth day of August, in the year of our Lord one thousand eight hundred and fifty-five, personally appeared before me, William G. Dryden, a notary public for Los Angeles county, Juan Moreno and Maria Antonia Cañedo, his wife, known to me to be the persons described in, and who executed the foregoing instrument, who acknowledged to me that they executed the same, freely and voluntarily, and for the uses and purposes therein mentioned. And the said Maria Antonia Cañeda, to me personally known to be the person whose name is subscribed to the foregoing conveyance as a party thereto, having been by me made acquainted with the contents of said conveyance, and she acknowledged to me, on an examination apart from and without the hearing of her husband, that she executed the same freely and voluntarily, without fear or compulsion or undue influence of her husband, and that she does not wish to retract the execution of the same.

In witness whereof, I have hereunto set my hand and affixed my [SEAL.] official seal the day and year first above written.

W. G. DRYDEN, *Notary Public.*

51 Received for record October 5th, 1855, at 10 o'clock a. m., and recorded same day at 12 m., in book E, pages 376, 377.

W. B. COUTTS,
Recorder, San Diego County.

Filed Dec. 3, 1855.

C. E. CARR, *Clk.*

52

53 *Motion for new trial.*

District court of the United States for the southern district of the State of California.

AGUSTIN MACHADO, appellee, *ads.* THE UNITED STATES, appellant. } Case No. 148. "Santa Rosa," San Diego county.

And now at this day comes the claimant, by his attorney, W. G. Dryden, and prays this honorable court to grant him a new trial in the above-entitled cause, for this:

1st. That the grant in this case is for a place by name called "Santa Rosa," vacant land between the ranchos of Laguna, Temecula, and Santa Margarita, without specifying the precise quantity; that separate and apart from this description, the place granted called "Santa Rosa" has other fixed natural boundaries, susceptible of proof by living witnesses, making thereby the grant clear and certain.

2nd. That the grant of a place by name is, by the Mexican laws and customs, good and valid, and vests in the grantee an equitable title therein, which is perfected into a legal title by the proof of the

boundaries corresponding and circumscribing the place designated by name in the grant. The amount of proof to establish those boundaries is a matter of judgment left to counsel in this case. It is now evident that such judgment was erroneous; which should not injure a party with vested rights and holding in good faith. Wherefore your petitioner would ever pray, as in duty bound, for general
54 relief, and such other and further considerations as are extended through equity.

W. G. DRYDEN,
Attorney for Appellee.

Filed Jan'y 7th, 1856.

C. E. CARR, *Clk.*

Affidavit for new trial.

District court of the United States for the southern district of the State of California.

AGUSTIN MACHADO, appellee, *ads.* THE UNITED STATES, appellant. } Case No. 148. Place called "Santa Rosa," San Diego county.

Agustin Machado, a resident of the county of Los Angeles, who, after being duly sworn, deposes and says that he was informed by his counsel in the above-entitled cause, that the recitals in the original grant conceeding vacant lands lying and being situate between three other ancient and well-known ranchos, was such a description of boundaries as would render the segregation of the land granted from the public domain easy and certain; and that the concession of said lands by name, for any quantity under the maximum, was good and valid.

This affiant further says that, after due investigation, he has
55 discovered new evidence whereby he can prove the natural boundaries of the place called "Santa Rosa;" that the same are known to the original grantee and the adjoining proprietors; and that these natural boundaries contain an area much less than the maximum; that, although those facts were in existence at the time that this cause was submitted to this honorable court, yet this affiant was ignorant of them, and much more so of their importance.

This affiant further states that in a reasonable time he will be able to obtain the proof which will establish the boundaries of the lands which are known as those which constitute and form the place called "Santa Rosa," and which are the lands mentioned in the original grant; that this affiant knows of no other place in San Diego county called "Santa Rosa;" that his grant for a thing by name vests in the grantee an inchoate and equitable title; and that he is now prepared to present material and newly discovered evidence sufficient to perfect his title to the lands called "Santa Rosa," as conceeded in the grant.

his
AGUSTIN + MACHADO.
mark.

Subscribed and sworn to before me this 7th day of January, A. D. 1855.

W. G. DRYDEN, *County Judge.*

Filed Jan'y 7, 1855.

C. E. CARR, *Clk.*

56

57 *Motion for continuance.*

In the district court of the United States for the southern district of California.—Dec. term, A. D. 1855.

THE UNITED STATES, appellants, *vs.* AGUSTIN MACHADO, appellees. } Case No. 148. For the place called "Santa Rosa," San Diego county.

And now comes the appellee in the above-entitled cause, and, by his attorney, W. G. Dryden, moves this honorable court for an order of continuance in this cause for this:

That this cause came on to be heard at a late day of the term—about 7th June—and a short time thereafter in said month a new trial was granted; that in order to sustain this claim entirely new testimony would have to be adduced, showing the exterior natural boundaries of the land in question called "Santa Rosa."

That the place granted, called Santa Rosa, is situated in a different county and at some distance from where this honorable court holds its terms, greater delay arising therefrom to this claimant in the procuring of testimony from persons nearest and best acquainted with the exterior limits of said place; and, in support of this motion for an order of continuance until the next term of this court, your petitioner offers the accompanying affidavit.

W. G. DRYDEN,
Attorney for Appellee.

Filed Feb'y 26, 1856.

C. E. CARR, *Clk.*

58 *Affidavit for continuance.*

In the district court of the United States for the southern district of the State of California.

THE UNITED STATES, appellants, *vs.* AGUSTIN MACHADO, appellee. } Case No. 148. Place called "Santa Rosa," San Diego county.

Agustin Machado, the appellee in the above-entitled cause, who, after being duly sworn, deposes and says that he has been informed by his counsel, and believes that entirely new testimony will have to be taken in this cause in order to establish the exterior natural boundaries of the place called "Santa Rosa," situated in San Diego county; that the persons best acquainted with these natural boundaries are

persons living in San Diego, whose depositions this affiant cannot procure without considerable delay; and he knows of no persons residing nearer this honorable court by whom he can prove these facts so clearly; that this affiant will be able by the next term of this court to obtain the testimony necessary to support his claim, and that he cannot now proceed to trial for the want of such testimony, which is material in this cause.

That this is the first continuance asked for by this affiant, and which has been duly called forth now by the closing of the present term. This affiant further says that it is not for delay that he asks this continuance, but that he may be enabled to present the merits of his case fully.

his
AGUSTIN + MACHADO.
mark.

Subscribed and sworn to before me this 26th day Feb., A. D. 1856.
W. G. DRYDEN, *County Judge.*

Filed Feb'y 26th, 1856.

C. E. CARR, *Clk.*

59

60 *Depo. of John Forster.*

THE UNITED STATES, app'l'ts,
vs.
JUAN MORENO, appelee. } No. 248. Santa Rosa.

Deposition of John Forster, a witness for appellee in the above-entitled cause, taken this 19th day of Feb'y, 1856, before Chas. E. Carr, U. S. com'r for the State of California.

Present: P. Ord, U. S. att'y. Wm. G. Dryden, for appellee, sworn as interpreter.

John Forster, being duly sworn, answers to questions propounded by counsel for the parties, as follows:

Ques. What is your name, age, and place of residence?

Ans. My name is John Forster; my age is 42 years; my residence, the county of Los Angeles.

Ques. How long have you resided in California?

Ans. Twenty-three years.

Ques. Do you know a place called Santa Rosa? If yea, state in what county the same is situated, and whether it is a place well known by that name.

Ans. I know it; it is situated in the county of San Diego, and is well known by that name.

Ques. Do you know of any well-known places that adjoin the place called Santa Rosa? If so, state in detail all the well-known places adjoining the same, their names, and in what direction from the same they are situated.

(Objected to by the U. S. att'y.)

61 Ans. I do. On the east it adjoins the ranch of Temecula. It is well known by that name. On the west it adjoins the well-known place called Santa Margarita; on the south is a stream running from Temecula through the rancho of Santa Margarita ; on the north it adjoins a deep ravine at the foot of the mountains known by the name of Portrero de la Cienega, running towards the place known as the Tenaja, in a westerly direction. These are all well-known places.

(Objected to.)

Ques. State if you know a place called La Laguna? If so, state where the same is situated, how far from, and in what direction from the place called Santa Rosa.

Ans. I know the Laguna; it is situated about six miles from Santa Rosa, in a northeasterly direction.

Ques. When you say six miles, to what part of the two places have you reference?

Ans. To the southern part of the Laguna, and the northeastern part of the Santa Rosa.

Ques. When you say "Laguna," do you mean a tract of land by that name or a body of water?

Ans. A body of water.

Ques. Do you know a tract of land called Laguna? If so, state how far it lies from a place called Santa Rosa, and in what direction?

(Objected to by U. S. att'y.)

62 Ans. I know the location of Laguna, without knowing its boundaries. It is in a northeasterly direction from Santa Rosa.

Ques. What is the distance, from west to east, from the place called Santa Margarita to the place called Temecula?

(Objected to by the U. S. att'y.)

Ans. About 8 or 9 miles.

Ques. What is the distance from the stream which passes from Temecula to Santa Margarita, lying on the south of this tract called Santa Rosa, across the place called Santa Rosa, to the ravine you have before described lying to the north of Santa Rosa.

(Objected to by the U. S. att'y.)

Ans. In the centre of the place called Santa Rosa, it would be six miles across; at the head of it, it would only be three.

Ques. How long have you known this place called Santa Rosa?

Ans. About twelve years.

Ques. State whether or not it has been well known by that name during all the time you have known it?

(Objected to by the U. States att'y.)

Ans. It has.

Ques. Do you know a place called the mission of San Luis Rey? If so, state how far it lies from the place of Santa Rosa, and in what direction.

(Objected to by the U. S. att'y.)

Ans. I do. It lies about nine miles from Santa Rosa, in a southwesterly direction from the place called Santa Rosa.

63 Ques. Were you ever applied to to give juridical possession of the place called Santa Rosa. If so, state when, by whom.

what office you held at the time, whether you gave juridical possession or not; if nay, state the reasons why the same was not given.

Ans. I have no distinct recollection of having been applied to for judicial possession of that place. Indistinctly, I think I was, but cannot say so positively. I was a justice of the peace about the time this ranch was occupied by Juan Moreno, and I might have been applied to for the judicial possession, but I cannot recollect distinctly.

Ques. At what time did the Americans take possession of that part of California, or the county where Santa Rosa 's situated?

Ans. In the latter part of 1846—about August or September.

Cross-examined by the U. S. att'y.

Ques. Where were you born?

Ans. In Great Britain.

Ques. At what age did you leave there?

Ans. At about sixteen or seventeen years of age.

Ques. What is your profession and occupation?

Ans. I am a ranchero.

Ques. What is the distance from Temecula to Santa Margarita.

Ans. About fifteen miles.

Re-examination in chief.

64 Ques. When you say 15 miles, to what points do you refer?

Ans. I mean from the houses on the two places.

JOHN FORSTER.

Sworn to and subscribed this 19th day of Feb'y, 1856, before me.

C. E. CARR, *Cl'k.*

Filed Feb'y 19th, 1856.

65 C. E. CARR, *Cl'k.*

66 *Deposition of Andres Pico.*

THE UNITED STATES, app'l'ts, *vs.* JUAN MORENO, app'ee. } No. 148. Santa Rosa.

Deposition of Andres Pico, a witness on the part of appellee in the above cause, taken this 19th day of Feb'y, 1856, before Ch's E. Carr, U. S. com'r for the State of California.

Present: P. Ord. U. S. att'y, and Wm. G. Dryden, counsel for appellee, sworn as interpreter.

Andres Pico, being duly sworn, answers as follows to questions propounded by counsel:

Ques. What is your name, age, and place of residence?

Ans. My name is Andres Pico; my age is 45 years; residence, county of Los Angeles.

Ques. How long have you resided in California?

Ans. I was born in California, and have always lived here.

Ques. Do you know a place called Santa Rosa? If so, state where the same is situated; whether the same is well known by that name.

Ans. I know several Santa Rosas. I don't know which you refer to.

Ques. Do you know a place called Santa Rosa situated in San Diego county?

Ans. I do.

Ques. How long have you known the place?

Ans. Since the year 1834.

Ques. State whether or not the place is well known by that
67 name.

Ans. It is well known by that name.

Ques. Do you know a place called Santa Margarita? If so, how far from the place called Santa Rosa is the same situated, and in what direction and state if it lies contiguous to or adjoins the same.

(Objected to by the U. S. att'y.)

Ans. I know the place called Santa Margarita. It is to the south of Santa Rosa, ten miles from Santa Rosa, and adjoins it.

Ques. Do you know a place called Temecula? If so, state in what direction it lies from the place called Santa Rosa, and whether it lies contiguous to or adjoins the same.

Ans. I know the place called Temecula. It lies to the east of and adjoins Santa Rosa.

Ques. State whether or not the places called Temecula and Santa Margarita are places well-known by these names.

Ans. They are well-known by these names.

Ques. State any well-known points, if you know any, that lies near or contiguous to the place of Santa Rosa on the west.

(Objected to by the U. S. att'y.)

Ans. A well-known place called Tenasa is on the west of Santa Rosa.

Ques. State any well-known point, if you know any, which lies on the north of Santa Rosa.

(Objected to by the U. S. att'y.)

Ans. On the north is La Laguna. It is well known by that
68 name.

Cross-examined.

Ques. What was the extent of the place of Santa Rosa at the time you knew it first?

Ans. It was very large then; the limits spoken of were not known at that time. At that time the land by that name was all in one body, and belonged to mission of San Luis Rey. I did not know the limits.

Ques. When were the limits of the place of Santa Rosa changed, and by whose authority or in what manner was the change made?

Ans. I knew the limits of Santa Rosa after all those lands had been granted.

Ques. Where were the limits of the place of Santa Rosa which you

have spoken of in your examination in chief established, and by whom, and in what manner?

Ans. In the year 1842 I knew the line of Santa Margarita; in 1844 I knew the line of Temecula; and 1847 I knew the line of the rancho of Laguna It was founded then.

This is all that I can state in answer to the question.

Deposition closed.

ANDRES PICO.

Sworn to and subscribed this 19th day of Feb'y, 1856, before me.

C. E. CARR, *U. S. Com'r.*

Filed Feb'y 19, 1856.

C. E. CARR, *Cl'k.*

69

70 In the district court of the United States within and for the southern district of California, Hon. I. S. K. Ogier.

THE UNITED STATES, appellants, *vs.* JUAN MORENO, appellant. } December term, 1856. No. 148.

Transcript from the board of land commissioners, No. 486.

This cause coming on to be heard on appeal from the decision of the board of land commissioners to ascertain and settle private land claims in California, upon the transcript of the proceedings and the documentary and other evidence upon which said decision was founded, and also upon other evidence taken and filed in this court, and counsel for the respective parties having been heard, it is—

Ordered, adjudged, and decreed, that the decision of said board of land commissioners, declaring valid and confirming the claim of the appellee, Juan Moreno, to the land described in his petition to said board, are set forth in the documentary and other evidence in this case, be, and the same is hereby, affirmed, and that his title to said land is a good and valid one.

The land of which confirmation is hereby made is situated
71 in the county of San Diego, and is known by the name of Santa Rosa, and the same granted on the 30th January, A. D. 1846, to Juan Moreno, by Governor Pio Pico. The land adjoins and is bounded by the lands known by the names of "Temecula," "Laguna," and "Santa Margarita," according to the grant and the map, to which reference is had.

Provided, however, if the land within said boundaries exceeds in quantity eleven square leagues, then the confirmation hereby made is made to eleven square leagues, and no more; but if the land within said boundaries is less in quantity than eleven square leagues, then the confirmation hereby made is made to such less quantity.

ISAAC S. K. OGIER,
U. S. Dist. Judge for the S. Dist. of Cal'a.

Filed Jan'y 15th, 1857.

C. SIMS, *Clerk.*

72 *Appeal.*

United States district court, south'n dist. Cal'a, December term, A. D. 1856.

FEB'Y 24TH, A. D. 1857.

JUAN MORENO
vs.
THE UNITED STATES. } No. 148.

On motion of P. Ord, U. S. att'y, it is ordered that an appeal be allowed the United States herein.

New appeal.

United States district court, south'n dist. Cal'a, December term, A. D. 1861.

DECEMBER 9TH, A. D. 1861.

JUAN MORENO, appellee,
vs.
THE UNITED STATES, app'l't. } No. 148, D. C. No. 486, L. C. "Santa Rosa."

And now comes J. R. Gitchell, esq., appointed at the request of the court to represent the United States, (there being no U. S. dist. att'y present,) and moves the court that a new appeal be allowed the U. S. in this case to the Supreme Court of the U. S., from the order and decree of this court heretofore rendered.

Which motion being heard and by the court understood, is granted.

73 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA,
Clerk's Office, Monterey.

I, John O. Wheeler, clerk of the United States district court for the southern district of California, do hereby certify the foregoing seventy-two pages, numbered from 1 to 72, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the decision of the said court, of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in my office, in case No. 148 on the docket of said court, wherein Juan Moreno is the claimant against the United States for the place known by the name of "Santa Rosa."

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court this the 30th day of March, A. D. 1862, at the city of Monterey, Cal'a.

JOHN O. WHEELER, *Clerk.*

Filed Sept. 20, 1862.

1784

SUPREME COURT OF THE UNITED STATES.

No. 145.—December Term, 1863.

The United States, appellants, *vs.* Juan Moreno, appellee. } Appeal from the southern district of California.

STATEMENT AND ARGUMENT FOR THE UNITED STATES.

The decree and confirmation in this case must be reversed:

1st. *Because the grant is not legally proved.*

It is proved by *secondary evidence of handwriting*, without the legal basis for its introduction having first been laid. (See printed Record, p. 3, Prudhome's testimony.)

2d. *Because the location and quantity of the grant are entirely uncertain*, both in the grant and in the diseño.

The grant does not specify the quantity of land granted, but refers to a diseño for quantity. (*Ib.*, p. 11.) April 5, 1845, Moreno, in his first petition, asked for "*one square league of land*, situate *between* Temecula and the lagoon called Santa Rosa," (printed Record, p. 7,) *but without an accompanying plat.*

April 25, 1845, the governor ordered the petition to be returned to Moreno, in order to have attached to it a *plat* of the land which he solicited. In the mean time he was granted a provisional right to occupy the said land. (*Ib.*, p. 7.)

January 30, 1846, Moreno presented a plat and accompanied it with a petition that the governor would make him a title for "the land bordering on Temecula, the lagoon, *and Santa Margarita, not naming the number of leagues as I (he) might be mistaken,*" &c. (*Ib.*, p. 8.) The only *new* boundary introduced was that of *Santa Margarita*. The expediente shows *two diseños*. This fact is explained by the answer made by the governor to this second application.

"Angeles, January 30, 1846. The party interested will apply to the secretary of state of the government, that in virtue of this decree the title deed be issued and given to the interested party, *with the obligation to* AMEND *the plat.*" (*Ib.*, p. 8, fol. 22.)

The *first* plat, marked page 11, it will be observed, is quite large, without any scale, without any statement of quantity, without any statement of adjoining boundaries, except the "Sierra de Temecula," without any point of the compass given, presenting a vague picture, which might apply to any one section of country as well as to another, and apparently without limits as to quantity.

The governor refused to make the grant on that basis. He directed *the plat to be reformed before the title should issue.* Accordingly, we find a *second* map, marked page 12, (see printed Record, p. 4, fol. 13,) added to the first one, and *of greatly reduced dimensions.* But it has the same defects as the first, and is even *less definite, as it gives no adjoining boundaries.* Inasmuch, however, as this is *the reformed map* which was ordered by the governor, it is to this that the grant must refer for quantity, and not to the first. When the petitioner asked for *one league his petition was granted,* subject to the condition of presenting *a plat of the land solicited.* When he presented a plat embracing a *much larger tract* of land, his petition was, in effect, refused, because the governor ordered the plat to be amended, before the title should issue. Now, if this second plat had any definite and intelligible boundaries, or if judicial possession had been given, as directed by the grant, and the number of leagues contained within the plat had been reported to the government, there would have been some certain basis upon which to confirm the grant. But in the absence of this, *the only element of certainty* to be found is the *one league* of land for which he originally petitioned, situated between the Temecula and the lagoon. This league may be the one intended to be represented by the amended plat, and may be capable of designation, from the testimony of the witnesses, who prove the location of his house, his corrals, improvements, &c. But unless this basis is assumed, the grant is entirely without limits *below* the maximum of *eleven leagues,* which has been fixed as the limit of the grant by the decree of the district court.

That there ever was any intention on the part of the grantee to ask for so large a grant, or on the part of the government to grant *eleven leagues of land to an ignorant boor, who could not write his name,* and who only asked for *one,* is negatived by all the facts in the case.

It is also clearly negatived by the fact that *only three leagues* appear to have been *claimed* before the land board, for to that number is the confirmation of the title limited. (See *Ib.*, p. 13.) How this quantity was arrived at by the board we cannot conjecture, unless it was by comparing the size of the second with the first plat, and thereby assuming that if the first contained *twelve* leagues, the second one contained *three,* because it is only about *one-fourth* as large.

Moreno, when he sold his title to Machado, the present claimant by substitution, only claimed and sold "*three leagues,* more or less." (See deed, *Ib.*, p. 19.) But since the transfer the claim has expanded wonderfully. Forster swears that the distance from Temecula to Santa Margarita, from certain points, is 8 or 9 miles, from others is 15 miles, (*Ib.*, pp. 24, 25;) and that from the laguna to Santa Rosa is 6 miles; and from the latter to the stream on the south, 6 miles more. (*Ib.*, p. 24.) Andres Pico swears that Santa Margarita is 10 miles *south* of Santa Rosa. The decree of the district court for *eleven* leagues of land, is evidently founded on this testimony as to the extent of the boundaries. This decree is $3\frac{2}{3}$ times greater than the amount of the decree by the land board, or than the amount sold by Moreno to Machado, the present claimant. Thus it appears

that it is *uncertain* whether the grant was for *one* league, for *three* leagues, or for *eleven* leagues, and, consequently, that its location is equally uncertain.

On this ground the claim might be rejected altogether; but if the court should regard that as rather a harsh and ungenerous measure of justice, then we insist that the confirmation shall be limited to *one league*, to be so located so as to include the land actually occupied, cultivated, and improved by the grantee, between the Temecula and the lagoon, and not elsewhere. In other respects the claim is free from reasonable objection.

If the claim shall be limited to *one league* in the manner already indicated, the United States will not oppose a confirmation to that extent, and will thus save the trouble of future litigation. But if that is not satisfactory to the claimant, then we insist that the decree shall be reversed, for the reasons already given, and that the case shall be rejected or remanded for further proceedings.

JOHN A. WILLS,
Special Counsel.
EDWARD BATES,
Attorney General.

[redacted]

15